

## DEPARTMENT OF STATE HEALTH SERVICES



This Contract, 2010-034694-001 number, is entered into by and between the Department of State Health Services (DSHS), a State of Texas agency, and City of Austin, a Texas home rule municipality located in Travis, Williamson and Hays counties, through its Health and Human Services Department (Contractor), collectively, the Parties. The Contract is regarding the DSHS Acquired Immunodeficiency Syndrome (AIDS) Drug Assistance Program.

1. **Purpose of the Contract.** DSHS agrees to provide, and City of Austin agrees to purchase, the services and/or goods as described in this Contract.
2. **Total Amount of the Contract.** The total amount of this Contract is not to exceed \$200,000 and the payment method(s) shall be as specified in this Contract.
3. **Term of the Contract.** This Contract begins on March 1, 2010, and ends on February 28, 2011. DSHS is not responsible for performance under this Contract before both parties have signed the Contract or before the start date of the Contract, whichever is later.
4. **Authority.** DSHS enters into this Contract under the authority of Health and Safety Code, Chapter 1001. If this is an interagency, contract authority is also granted through the Texas Government Code, Interagency Cooperation Act, Chapter 771 et seq. If this contract is an interlocal, contract authority is also granted through the Texas Government Code, Interlocal Cooperation Act, Chapter 791 et seq.
5. **Documents Forming Contract.** The Contract consists of the following:
  - a. Core Contract (this document)

Any changes made to the Contract, whether by edit or attachment, do not form part of the Contract unless expressly agreed to in writing by DSHS and City of Austin Health and Human Services and incorporated herein through written amendment.

This Contract may be modified within the Contract period by written amendment signed by both Parties.

6. **Statement of Work.** DSHS shall provide eligible, Human Immunodeficiency Virus (HIV)-infected clients with formulary medications supplied by the Texas HIV Medication Program for clients residing in the Transitional Grant Area (TGA) defined as the following county(ies)/area: Bastrop, Caldwell, Hays, Travis, and Williamson counties (see [http://www.dshs.state.tx.us/hivstd/planning/docs/HSDA\\_1.pdf](http://www.dshs.state.tx.us/hivstd/planning/docs/HSDA_1.pdf)), as described herein and as provided under DSHS regulations.

Eligible clients shall be participants in DSHS AIDS Drug Assistance Program (ADAP) (see <http://www.dshs.state.tx.us/hivstd/meds/faq.shtm>), and have no third party payor for obtaining the HIV-related medications.

The project is funded by a federal grant to City of Austin from the United States Public Health Service, Health Resources and Services Administration (HRSA) pursuant to the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, 42 USC §§300ff-300ff-111 (the "Act"), as amended, to provide direct financial assistance to qualified entities for the purpose of delivering or enhancing HIV-related: (1) outpatient and ambulatory health and support services, including case management and comprehensive medical services for individuals and families who have a member infected with HIV disease, and (2) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities.

DSHS will provide the Transitional Grant Area (TGA) Executive Director with a final report, due sixty (60) days after this Contract term ends, detailing the number of eligible clients served in that TGA and the amount of money expended by county in that TGA.

7. **Payee.** The Parties agree that the following payee is entitled to receive payment for services rendered by DSHS or goods provided under this Contract:

Name: Department of State Health Services  
Address: PO Box 149347  
Austin, TX 78714-9347

Vendor Identification Number: 35375375371000

8. **Payment Method.** A lump sum payment will be made to the Department of State Health Services, according to federal Public Health Service pricing (340B) in effect at the time each medication is dispensed, within 60 days of the end of this contract. The payment is contingent on whether the City of Austin has unexpended Ryan White Part A funds and whether it chooses to allocate them to the Texas AIDS Drug Assistance Program (ADAP) to assist with medication services provided by ADAP, according to its current federal Ryan White Part B contract, for persons living with HIV in the Austin TGA. Any services performed by DSHS for which payment under this contract from the City of Austin is not received will be considered to have been performed outside of the scope of this contract.

9. **Billing Instruction.** DSHS shall submit an invoice not to exceed \$200,000 within 60 days of the end of this Contract to the attention of Mark Pepler, Contract Manager, HIV Resources Administration, at 7201 Levander Loop, Building E, Austin, Texas 78702.

10. **Confidentiality.** Parties are required to comply with state and federal laws relating to the privacy and confidentiality of patient and client records that contain Protected Health Information (PHI), or other information or records made confidential by law. DSHS shall ensure that the confidentiality of all reports, information, client records, and data prepared, collected or assembled by DSHS pursuant to this contract is maintained in accordance with applicable federal and state statutes and regulations. Any disclosure of confidential patient information by DSHS shall be in accordance with all applicable

federal and state law. DSHS shall further ensure that employees understand and are familiar with confidentiality requirements regarding HIV/AIDS-related medical information.

11. **Security of Patient or Client Records.** City of Austin agrees that data received from DSHS shall be treated as confidential as required by applicable law, and ensure all information provided to outsourced entities remains confidential and utilized as specified in federal and state law, and in any pertinent written agreements. Data will not be used for any purpose other than that specifically set forth herein. Data will not be made available to any other individual or organization without proper consent. Data will be maintained to prevent unauthorized access and will not be used to track back to any individual or organization identified by the data. DSHS shall not transfer an identifiable client record, including a patient record, to another entity or person except as provided by law; however, City of Austin may require DSHS to transfer a client or patient record to another agency or to City of Austin if the transfer is necessary to protect either the confidentiality of the record or the health and welfare of the client or patient. At the end of the Program Attachment term, all client or patient records are the property of DSHS. DSHS shall ensure that proof of HIV status is documented in the client's record file. This may include a copy of a physician's statement, copy of a laboratory result indicating HIV positive status, or a written referral from an HIV educational and testing site indicating the client's HIV status.

DSHS shall ensure that the confidentiality of all reports, information, client records, and data prepared, collected or assembled by DSHS pursuant to this contract is maintained in accordance with applicable federal and state laws. Any disclosure of confidential patient information by DSHS shall be in accordance with all applicable federal and state law. DSHS shall further ensure that employees understand and are familiar with confidentiality requirements regarding HIV/AIDS-related medical information.

12. **Suspension of Services Under This Contract.** In the event of an emergency or problems with information technology systems, DSHS may temporarily suspend or limit services without advance notice.

13. **Termination.** This contract Attachment may be terminated upon thirty (30) calendar days written notice by either party.

Termination of this contract by City of Austin will be effectuated by delivering to DSHS a written notice of termination specifying to what extent performance of work under this Contract has been terminated and the effective date of termination. After receipt of said termination notice, DSHS shall stop work under this contract the date of termination and to the extent specified in the notice of termination. Upon receipt of such notice, DSHS shall not incur new obligations and shall cancel any outstanding obligations regarding its performance duties under this Contract. City of Austin will reimburse DSHS for non-cancelable obligations which were incurred prior to the termination date.

DSHS reserves the right to limit or cancel this Contract should DSHS determine that it has insufficient capacity in its information technology system(s) to maintain current levels of activities under this contract and/or that continued activities under this contract are detrimental to the overall efficiency and operation of DSHS's information technology systems. Any such limitation or termination of services will be upon written notice to City of Austin by DSHS.

Upon termination of all or part of this Contract, DSHS and City of Austin will be discharged from any further obligation created under the applicable terms of this Contract except for the respective accrued interests and obligations incurred prior to termination.

14. **Terms & Conditions.**

**A. Federal and State Laws, Rules and Ordinances.** Parties shall comply with all applicable federal and state statutes, rules and regulations.

**B. Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, the Contract shall be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit shall be Travis County, Texas.

**C. Exchange of Client-Identifying Information.** Except as prohibited by other law, City of Austin and DSHS shall exchange Public Health Information (PHI) without the consent of clients in accordance with 45 CFR § 164.504(e)(3)(i)(B), Health and Safety Code § 533.009 and Rule Chapter 414, Subchapter A or other applicable law or rules. Contractor shall disclose information described in Health and Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Health and Safety Code §614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

**D. Records Retention.** DSHS shall retain records in accordance with the State of Texas Records Retention Schedule, located at <http://www.dshs.state.tx.us/records/schedules.shtm>, DSHS Rules and other applicable state and federal statutes and regulations governing medical, mental health, and substance abuse information.

**E. Severability and Ambiguity.** If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue. Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

**F. Legal Notice.** Any notice required or permitted to be given by the provisions of this Contract shall be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address first given above (or at such other address as the Party shall specify to the City of Austin in writing) or, if sent by certified mail, on the date of receipt.

**G. Immunity Not Waived.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY EITHER PARTY OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT EITHER PARTY OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

**H. Waiver.** Acceptance by either party of partial performance or failure to complain of any action, non-action or default under this Contract shall not constitute a waiver of either party's rights under the Contract.

**I. Breach of Contract Claim.** The process for a breach of contract claim against DSHS provided for in Chapter 2260 of Texas Government Code and implemented in the rules at 25 TAC §§1.431-1.447 shall be used by DSHS and City of Austin to attempt to resolve any claim for breach of contract made against DSHS.

15. **Entire Agreement.** The Parties acknowledge that this Contract is the entire agreement of the Parties and that there are no agreements or understandings, written or oral, between them with respect to the subject matter of this Contract, other than as set forth in this Contract.

By signing below, the Parties acknowledge that they have read the Contract and agree to its terms, and that the persons whose signatures appear below have the requisite authority to execute this Contract on behalf of the named party.

DEPARTMENT OF STATE HEALTH  
SERVICES

CITY OF AUSTIN

By: \_\_\_\_\_  
Bob Burnette, Director  
Client Services Contracting Unit  
Department of State Health Services

By: \_\_\_\_\_  
David Lurie, Director  
City of Austin Health and Human  
Services Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Bob Burnette, C.P.M., CTPM

\_\_\_\_\_  
Printed Name and Title

Director, Client Services Contracting Unit

City Hall 301 West 2<sup>nd</sup> Street, Third Floor  
Address

1100 WEST 49TH STREET  
AUSTIN, TEXAS 78756

Austin, Texas 78701  
City, State, Zip

(512) 458-7470

\_\_\_\_\_  
Telephone Number

Bob.Burnette@dshs.state.tx.us

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E-mail Address for Official Correspondence